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| In re Application of | : | |
| Fritz | : | |
| Serial No.: 10/018,619 | : | DECISION ON |
| PCT No.: PCT/EP00/05631 | : | PETITION |
| Int. Filing Date: 19 June 2000 | : | UNDER 37 CFR 1.137(b) |
| Priority Date: 18 June 1999 | : | |
| Attorney's Docket No.: 3993.003 | : | |
| For: RADIATION SOURCE FOR | : | |
| ENDOVASCULAR RADIATION TREATMENT | : | |

This decision is responsive to the "PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, TO ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE APPLICATION" filed 05 November 2004. Applicant has included a petition fee of \$1500.

BACKGROUND

On 19 June 2000, applicants filed international application PCT/EP00/05631, which claimed priority of an earlier European application filed 18 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 December 2000. A Demand for international preliminary examination was filed on 06 December 2000. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 18 December 2001.

On 17 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a preliminary amendment, and a check for \$1200 which included the basic national fee of \$890. These papers were assigned Application No. 10/018,619.

On 15 February 2002, the United States Patent and Trademark mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee. The notification set a two-month time period in which to respond.

On 17 January 2003, the United States Patent and Trademark mailed the "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the notice mailed 15 February 2002.

On 09 June 2005, applicant filed the current petition.

DISCUSSION

MPEP §711.03 states, in part:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Applicant has not provided the proper documentation to prove an allegation of nonreceipt of the Office action. Further, applicant alleges that the 15 February 2002 notice (form PCT/DO/EO/905) was mailed to the wrong address, and therefore applicant did not receive said notice. However, a review of the application has found that on 16 May 2003, applicant submitted an Information Disclosure Statement which included the address to which the 15 February 2002 notice was mailed. Therefore, a full fifteen months after the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905)" was mailed to applicant, applicant was still using the same address. Furthermore, applicant did not file a change of address in this application until 19 May 2003, well after the mailing of the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905)."

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55

With respect to element (1), applicant has failed to provide a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." Therefore, the petition to revive is dismissed.

CONCLUSION

The petition to withdraw the holding of abandonment is **DISMISSED**.

The petition to revive under 37 CFR 1.137(b) is **DISMISSED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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